



In the Matter of Allied Waste, Remedy Intelligent Staffing, and Labor Ready Findings and Recommendations

June 2, 2016

Introduction

The City of Buffalo contracts with Allied Waste Services of North America LLC (“Allied”) for recycling services. Allied employs a number of workers directly and also contracts with two temporary staffing agencies, Remedy Intelligent Staffing (“Remedy”) and Labor Ready. Allied has one division for its hauling services and another division for processing materials. For a number of years, Allied has paid its workers in the hauling division a living wage and has submitted quarterly reports to the Living Wage Commission (“the Commission”) documenting its wages.

In 2015 the Commission asked Allied also to file quarterly reports concerning the workers who process the recyclables at the Material Recovery Facility (MRF) that Allied operates through its processing division. When Allied indicated that it subcontracts with Remedy and Labor Ready for its temporary staffing needs at the MRF, the Commission also requested quarterly reports from Remedy and Labor Ready on its workers there.

The quarterly reports from Allied indicate that sorters at the MRF are paid an hourly wage rate of \$11.63 or \$13.06 “as determined by applicable percentage of volume” (Allied’s reports did not list employees other than sorters). Reports from Remedy indicate that temporary sorters are paid an hourly rate of \$10.30 “as determined by applicable percentage of volume related by City of Buffalo Contract.” Reports from Labor Ready appear to include only temporary workers in the hauling division, not the workers at the MRF.

The Commission held a hearing on May 24, 2016 to determine whether these three employers are in compliance with the City’s living wage law, and, in particular, whether it is legal to apportion workers’ wages by percentage of volume. All three employers had representatives at the hearing, and Allied submitted a letter brief and numerous exhibits in advance.

In its brief and at the hearing, Allied advanced two arguments: first, that the sorting work at the MRF is not part of a contract covered by the living wage law; and, second, that if the sorting

work is covered, the employees make a living wage for their work under the Buffalo contract, when that work is measured by the volume of material that comes from the City of Buffalo.

Finding #1. The work at the MRF is covered by the living wage law.

The City's contract with Allied is titled "Recycling Collection and Processing." Article 2 of the Contract, "Work to be Performed," describes the work as "all work and acts necessary for the acceptance and marketing of recyclables as set forth in the RFP for or incidental to: RECYCLING COLLECTION AND PROCESSING." The Request for Proposals includes detailed "Conditions and Requirements for the Processing of Recyclable Materials." The RFP provisions include details about the location of the MRF, the times it will be open, the weighing of materials, etc. The City has a material interest in the work of the MRF, because the City receives rebates based on the tonnage of material weighed at the MRF.

Allied argues that the contract applies only to collecting, pointing to the part of the RFP labelled "Specific Proposal Conditions: Collection Option 2." The three options, in brief, are for 1) weekly collection of totes and bins; 2) weekly collection of totes; and 3) bi-weekly collection of totes. The collection options are only one part of the RFP, however. The fact that the RFP includes three collection options does not mean that the RFP concerns only collection. By its title and many of its terms, it also includes processing.

Finding #2. The living wage rate may not be apportioned by volume.

Allied argues that it may apportion the living wage by volume of material received at the MRF. For example, it states that in the first quarter of 2016, material from the City was 31.58% of the material processed at the MRF. Hence, Allied argues, it is legal to pay its workers a living wage for 31.58% of their time (so long as they are making at least the state minimum wage the rest of the time). Offering an analogy from another area of law, Allied cites an opinion from the state Department of Labor about whether employees working on a project in a testing and repair capacity would be paid a prevailing wage for the entire period of time that they work on that site. The Department of Labor opined that "a worker is entitled to prevailing wage rates for those **times during the day** that they perform prevailing wage work. To the extent that a worker performs other work not subject to the prevailing wage law, the rate of pay for such work would not necessarily be at prevailing wage." Request for Opinion/Test and Repair Contracts, File No. RO-08-0158 (emphasis added).

Even if an employer may apportion the living wage by time, however, the Commission finds that Allied, Remedy, and Labor Ready may not apportion the wage by volume of material. As Allied explains, materials are dumped on the floor of the MRF and combined into one large pile, in which material from Buffalo is indistinguishable from material from other sources. That material is then loaded onto conveyor belts and sent to the sorters for processing. For a sorter there is no distinction between Buffalo material and other material, and there are no designated times of day for Buffalo work or non-Buffalo work. In other words, the process of "working on

the Buffalo contract” is fairly continuous, even if that contract currently accounts for only 31.58% of the material. (The amount of tonnage from Buffalo varies over time, and, as other customers are lost and gained, the portion of material that comes from Buffalo also changes). The Commission finds that – at least in cases when an employer cannot clearly delineate the hours when a worker is not working under a city of Buffalo contract – the living wage applies to all of that worker’s hours.

As the City stated in its legislative determination of intent (Section 96-19), paying a living wage yields many benefits to employees, employers, taxpayers, and the City as a whole. As the law notes, paying less than a living wage “tends to inhibit the quantity and quality of services.” It fosters “high turnover, absenteeism, and lackluster performance.” It “fails to provide service employees with resources sufficient to afford live in the City of Buffalo.” In contrast, paying a living wage decreases poverty; increases homeownership, property tax revenues, and local business revenues; decreases crime, improves school outcomes; and reduces reliance on public assistance programs. These purposes would be undercut if Allied were allowed to pay its workers less than a living wage.

Recommendations

1. Allied, Remedy, and Labor Ready should ensure that their quarterly reports include all those who work on the City Contract. For example, previous reports from Labor Ready included only haulers, not sorters. Reports from Allied have included sorters at the MRF, but not operators and office staff.
2. The City of Buffalo should ensure that future recycling RFP’s and contracts state in plain terms that all workers involved in processing materials must be paid a living wage for all of their work hours.
3. By the next living wage reporting quarter (i.e., as of July 1, 2016), Allied, Remedy, and Labor Ready should begin paying all workers a living wage (currently \$11.63 per hour with health benefits and \$13.06 without) for every hour worked.
4. To the extent practicable and with particular attention to currently employed workers, Allied, Remedy, and Labor Ready should make whole those workers who have worked under the City of Buffalo contract for less than a living wage in the past.

Respectfully Submitted,

*Reverend Merle Showers
Chair, City of Buffalo Living Wage Commission*